

14 COMMANDMENTS OF CROSS EXAMINATION

1. **Be Informed & Prepared.** Review law and all statements of the witness.
2. **Be Brief & Focused on Your Objectives/Topics.** Question only in alignment with the defense theory. Develop factual topics to be covered for each witness.
3. **Use Plain Words and Use Words that Align With Your Defense Theory.**
“Stopped the car” rather than “Initiated a Traffic Stop”,
“Held” rather than “Grabbed”, “Upset” rather than “Angry”
4. **One Fact Per Question.** Break Down Each Cross Examination Topic into separate facts to be elicited from the witness.
5. **Use Only Leading Questions.** Use the statement leading method and dump the tags like: “Isn’t it true..” “Correct,” “Fair to say”.
6. **Ask Only What You Know.** Never ask a question for which you do not know the answer. Cross is not the time for discovery.
7. **Go From General to Specific.** Close doors to prevent witness from escaping answer.
8. **Use Topic Transitions.** “The next topic I would like to discuss with you is...” This keeps the jurors oriented to the facts you are bringing forth.
9. **Listen and Adapt.** Listen to the answers of witness on direct and during your exam. Address new facts brought out on direct exam that support the defense theory.
10. **Do Not Argue With a Witness.** Do not quarrel with the witness on cross-examination – you will lose. Retreat to facts! Paint a clear picture of the defense facts and the jury will take care of the value and judgments.
11. **Avoid Repetition of State’s Facts.** Never allow a witness to repeat on cross-examination what he said on direct examination.
12. **Use Your Body, Exhibits and Demonstrative Items.** Jurors will remember more in the deliberation room if they SEE it along with hearing it.
13. **Use Recency & Primacy Rules.** Start strong and end strong. People most remember what they hear first and last. Also – this supports use of Topic Transitions.
14. **Know When to Quit and Save it for Closing.** Save the ultimate point for your closing argument. Avoid argumentative or conclusory statements that begin with “So,” “Yet,” “Still,” or “Therefore.”

Credit: Irving Younger, The Art of Cross Examination, ABA (1975). Updated B. Porter 2010.